

A New Castle City Board of Adjustment Hearing took place on March 27, 2013 at 8 p.m. in the City of New Castle's Town Hall.

Present: Donald A. Reese, Mayor
Daniel R. Losco, City Solicitor
David J. Athey, City Engineer

City Personnel: Jeff Bergstrom, City Code Official

Mayor Reese called the meeting to order at 8:15 p.m. Roll call was taken.

Mr. Losco read the Notice of Public Hearing that states, "An application has been filed by Bryant P. Nelson, 900 Waters Edge Drive, Newark, DE 19702, for property located at 802 West 13th Street, tax parcel number 21-013.00-021 and 21-014.00-046, seeking approval of structural alterations resulting in an enlargement or extension of a non-conforming structure or use, to permit a total of 8 individual dwelling units in the existing multi-family dwelling.

For the purpose of considering this application, the Board of Adjustment will hold a Public Hearing on Wednesday, March 27, 2013, at 8 p.m. in Old Town Hall, 2nd Floor, located at 2nd and Delaware Streets, New Castle, Delaware."

An affidavit of publication was published in the *News Journal* and the *New Castle Weekly*.

(Mr. Nelson was sworn in by Mr. Losco.)

Brian P. Glancy, counsel for the applicant, presented a brief explanation of the application and introduced a binder of exhibits. It was originally built in the mid-1960s. Previous owner was Francis Antonio. They had two deeds, the original purchase in 1959 and a second purchase in 1965. Since that time it has been expanded by construction internally, but mostly externally. Original use was for a single-family home plus an office. A variance was granted in 1980 for an expansion of the non-conforming office use to permit a single-family residence plus two apartments. In 1982 another variance was sought by a realtor. At that time it was a multi-apartment building with 12,500 square feet of living space. There is a lot of incomplete information on how the building was constructed over time and whether permits were obtained. After the Antonio's had passed away there were seven apartments in the building and the estate decided to sell the building "as is."

Mr. Glancy said the application is not for a variance or special exception. It is for an expansion or extension of an existing use.

The expansion is from the certified two non-conforming units to eight. Part of the expansion from two units to seven units would be to confirm what has been in use for at least 25 years. There are no structural changes being made. The applicant intends to do electrical work to take four separate meters and install eight meters so each unit has its own meter. He will also be adding new fire suppression and HVAC systems.

Referring to Tab 8 in the exhibit book, Mr. Nelson gave a history of the property as he knows it, and described how the existing seven units are laid out. He resides in one of the units (#1 on the exhibit) and is seeking to rent the basement of his unit, making that unit

#8. It has its own separate entrance. At some point around 1980 the porch and car port was enclosed and another 2 stories were built which house units 4, 5, and 7. Four units are occupied, including his unit. The occupants in units #2 and #4 have lived in their units uninterrupted for 25 years.

Structural alterations have already occurred prior to the applicant's ownership and he is seeking an acknowledgement of an expansion of a previous non-conforming use of two units. Mr. Glancy said the six additional units can't be legally occupied until confirmation is received from this Board that this is an allowable expansion of an existing non-conforming use. The last ruling was in 1980. Mr. Nelson bought the property under a FHA 203 K Loan Program where the mortgage company lends money to make improvements to the property. Those improvements are represented by the fire suppression and HVAC systems and electrical work, which would be required for a new multi-unit building. Zoning of the area is R1.

Tab 9 & 10 shows that the expense the applicant is willing to incur to bring the building into Fire Code compliance is significant.

Tab 5 is the survey and mortgage inspection plan when Mr. Nelson bought the property. Parking on the property was discussed (Tab 7). There is ample parking, both onsite and on street. Mr. Losco inquired how many bedrooms will be in each unit. There are two bedrooms in unit #1, one bedroom in #2, #3, #4, #5, #6 and #7. The basement unit (#8) will also have one bedroom.

To Mr. Nelson's knowledge there has been no interruption in the multi-family use of this building in the last 25 years. He has spoken to a number of neighbors who have confirmed its use as residential and commercial (office) for the existence of the property.

Mr. Glancy reported no objections to this application from neighbors and some neighbor's provided formal consent letters which were provided under Tab 11. There has never been an issue with this property (parking, noise, condition). Tab 7 shows satellite images of the area to illustrate the size of the building (12,500 square feet), thereby supporting its continued use as a multi-unit apartment building.

Mr. Glancy argued that a single building on four separate lots with eight apartments has less of an impact than four single family houses on four lots that could have been built.

Mr. Athey asked for an explanation of the Doctrine of Natural Expansion that is referred to in the City Code book. Mr. Glancy said it is a doctrine in common law that says that an existing non-conforming use can be expanded as long as the expansion is consistent with the existing non-conforming use. If there is an expansion of the use you are not harming the Code or its intention since the expansion is a natural extension of the pre-existing condition.

Rationale for extending the use to allow an eighth apartment was discussed. It is understood the applicant is going to considerable expense to improve the property by updating the electrical system and installing a fire suppression system. Mr. Glancy said proper approvals were not sought by the previous owner and using the Doctrine of Natural

Expansion to extend the non-conforming use to its logical end makes sense since an eighth unit is the only thing left that can be done to the property.

Mr. Losco asked if the eighth unit covers the entire basement (2,000 square feet) and whether it will be one bedroom. Mr. Nelson testified the apartment will encompass the whole basement and will contain one bedroom.

The building was built in stages. Mr. Bergstrom was questioned about building permits for that work. He said the Building Inspector at the time was Mr. Antonio and adequate records were not kept. There is no Certificate of Occupancy for this building. Mr. Bergstrom confirmed it is not known if the building meets the City's building code. He presumes some type of inspection was being done, but there are no City records prior to 1980. To this end, Mr. Glancy reported the Fire Marshal has inspected the property. Mr. Nelson understands through Mr. Bergstrom that he needs to bring the building up to Code with a fire suppression system. The building has never been inspected as it relates to the City's building code.

Mayor Reese said much of the Washington Street community was built during World War II and after the war a lot of the community was taken down. There are 5-6 different styles of homes in Washington Park today. This building has fit into the nature of the community for 40 years. Mr. Nelson said the house is well constructed and was built by Mr. Antonio.

According to Mr. Glancy, absent relief from this Board a single family plus two units would not justify the expense of installing a fire suppression system, but incurring the expense will make the building and neighborhood safer for tenants and residents. The expansion is consistent with the public welfare, safety and health. The fact there is no reasonable alternative use for a building of this size represents an unnecessary hardship. The applicant did not create the hardship.

Mr. Glancy referenced Section 230.10(B) of the Code that says that "any non-conforming use may be extended throughout any parts of a building which were manifestly arranged or designed for use at the time of adoption or amendment of this chapter but no such use shall be extended to occupy any land outside such building except after approval by the Board of Adjustment as provided." His interpretation is that as long as you are expanding a non-conforming use within the confines of the current structure it may not be necessary to appear before this Board. Section 230.57(D) speaks to expansion being consistent with the intent of the Code. Mr. Glancy's argument is 230.10(B) justifies the intent of the Code to allow the internal natural expansion of an existing non-conforming use and the relief being sought by the applicant.

Mr. Losco asked if the building has been expanded since 1980 when the non-conforming use was first verified. Mr. Glancy said the timeline was difficult to determine. The house was built in the mid-1960s before the Code. In the early 1970s the right side of the first floor was added with a car port. In the later 1970s the carport and wrap-around porch were enclosed and the second floor was added.

Looking at Tab 2, Mr. Losco said the 1979 application signed by Mr. Antonio refers to a 1-1/2 story of approximately 10,000 square feet and the application in 1982 and Realtor

Pauline Bartlett's letter (May 1982) mentions about 12,500 square feet which would indicate an intervening expansion of the building.

Mr. Nelson said there are three apartment units (#4, #5, #7) (Tab 8) built as apartments containing separate utilities. It appears that after approval of single family plus two apartments in 1980, three apartments were added by 1982.

While the applicant is trying to legitimize what was done improperly years ago, Mr. Losco noted it is an expansion of the existing structure such that this has not entirely been an expansion within the confines of the original building.

Mayor Reese spoke to the character of the neighborhood.

In summary, Mr. Glancy said Code requirements are different than a variance as set forth in Section 230-57(2). This requires enlargement not be contrary to public interest. There has been no objection for decades. There are special conditions that create hardship which have been addressed. There is limited definition of the Doctrine of Natural Expansion that supports the natural expansion of a pre-existing, non-conforming use. The application is consistent with the public's safety and welfare. The building is owner occupied and he will be improving fire and safety features in the building.

Mr. Bergstrom reminded the applicant of his obligation to meet the State Fire Code. The applicant is aware of his obligation.

No one spoke in favor or opposition of the application.

A motion was made by Mr. Losco to adjourn from the public portion of the meeting and enter deliberations. Mr. Athey seconded and the motion was approved.

Mr. Losco commended the applicant for coming forward to correct illegal expansions without proper approvals and he believes updated electrical and fire suppression systems will enhance safety for the current occupants and residents of the neighborhood. Special conditions are that this is a massive building on four original building lots in Washington Park making it not practical for use as a single-family residence or one resident with two units previously deemed non-conforming. The applicant has satisfied off-street parking concerns and will need to meet two parking spaces per unit per Code. No one objected in writing or in person indicating the building is already a part of the fabric of the neighborhood.

Mayor Reese is impressed that neighbors were approached and no one has expressed opposition to the application.

Mr. Athey is concerned with the addition of an eighth unit, but considering the financial investment of the applicant and the noted improvements to the property, those concerns are offset.

Mr. Losco made a motion to approve the application as presented citing the rationale previously mentioned. Mr. Athey seconded and the motion was unanimously approved.

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The hearing was adjourned at 9:15 p.m.

Respectfully submitted,

Debbie Turner

Stenographer